

PT 03-1

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**MT. PULASKI TOWNSHIP
HISTORICAL SOCIETY**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

**A.H. DOCKET # 00-PT-0033
DOCKET # 99-54-12**

**P.I. # 54-06-322-007-00
54-06-322-008-00**

**Barbara S. Rowe
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Dwight O'Keef of Brown, Hay & Stephens for Mt. Pulaski Historical Society; Mr. Kent Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held to determine whether Logan County Parcel Index Nos. 54-06-322-007-00 and 54-06-322-008-00 qualified for exemption during the 1999 assessment year.

Mr. Wallace Kautz, president of the Mt. Pulaski Township Historical Society, (hereinafter referred to as the "Applicant") was present and testified on behalf of applicant.

The issues in this matter include, first, whether applicant was the owner of the parcels during the 1999 assessment year; secondly, whether applicant is an exempt organization; and lastly, whether the parcels were used by applicant for exempt purposes during the 1999 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemptions be granted from August 2, 1999, through

December 31, 1999. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Logan County Parcel Index Nos. 54-06-322-007-00 and 54-06-322-008-00 did not qualify for a property tax exemption for the 1999 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 7)

2. The Department received the request for exemption of the subject parcels from the Logan County Board of Review. The board recommended granting a full year exemption. The Department denied the requested exemption finding that the property was not in exempt ownership and not in exempt use. (Dept. Ex. No. 1)

3. Applicant was incorporated under the General Not For Profit Corporation Act of the State of Illinois on June 11, 1997. The purposes for which applicant is organized are:

Educational – to provide tours of the city and historical sites and educate tourists, local citizens and school aged children to their roots & lifestyles of the their ancestors.

Research – develop and continue our Research Center data for Historical and Genealogical research purposes. To educate visitors to the need to preserve and maintain memorabilia for future generations. (Applicant's Ex. No. 3)

4. Applicant is exempt from payment of federal income tax pursuant to a designation that it qualifies as a 501(c)(3) charitable organization under the Internal Revenue Code. (Applicant's Ex. No. 2)

5. Applicant's classifications of membership include:

- a) Charter: Those persons who participated in the founding and organizing of the Society and who were members prior to April 1, 1995.
- b) Individual: One (1) person at the established annual rate of 15.00.
- c) Joint or family: Two (2) persons or more living at the same address and entitled to only one copy of Newsletters or other mailings.
- d) Life: Individual for \$150.00.
- e) Life-Joint: A married couple living in the same household for \$225.00.
- f) Honorary or Complimentary: Given in recognition of outstanding service to the Society or for making a significant contribution to Historical Preservation.
- g) Student: \$7.50. (Applicant's Ex. Nos. 4, 5)

6. Section 2 of Article One of applicant's by-laws, amended on July 31, 1999, and ratified by the organization on August 2, 1999, states:

This Society shall recruit members interested in the preservation of history of this area and county and preserving genealogical family histories. To obtain and remain a member of the Society the provisions of this artical [sic] and payment of annual dues, fees on or before the date due must be in compliance. When just cause is presented annual dues and fees shall be reduced or waived. Reduction or waiver of annual dues and fees will be determined by the Menbership [sic] Committee and all applications will be accepted under the terms of these BY-Laws [sic]. (Applicant's Ex. Nos. 4, 5)

7. The applicant acquired the subject parcels by a warranty deed dated November 16, 1998. (Applicant's Ex. No. 1)

8. Located on the subject parcels are two buildings. Building one is two stories and contains a 1380 square foot museum that houses historical displays and artifacts. Applicant's administrative offices are located on the first floor of building one. Building two is also two

stories and has a museum and applicant's genealogical research center. (Dept. Ex. No. 1; Tr. p. 14)

9. The buildings required remodeling and were not opened as museums until late in 1999. (Tr. p. 17)

10. Applicant does not charge fees for use or tours of its museum; nor does applicant charge fees for assistance with genealogical research. Volunteers of applicant are available to help with genealogical research and to offer tours of the museums. (Tr. pp. 16- 20)

#. Visitors to Mt. Pulaski contact applicant's volunteers for assistance in genealogical research and the history of the area. Applicant has 212 members. (Applicant's Ex. No. 5; Tr. pp. 14-15)

11. Every year applicant offers free tours to the third grade class from the Community Consolidated Grade School. Applicant also offers speakers to educate the public about its mission. (Tr. pp. 15-16)

12. Applicant received resolutions from the Logan County Board, the City of Mt. Pulaski, the Logan County Cemetery Maintenance District, the Mt. Pulaski Community Unit School District #23, Mt. Pulaski Fire Protection District, Mt. Pulaski Public Library District, Mt. Pulaski Park District, Mt. Pulaski-Chester Multi-township Assessor, Mt. Pulaski Road District, Mt. Pulaski Township, and Lincoln Land Community College stating that applicant is a charitable organization using the subject properties for charitable purposes. (Applicant's Ex. No. 6)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts

and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation in 1999 as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .
- (f) An historical society, but only if all taxing districts within which the property is situated have adopted a resolution finding that the society is a charitable organization using the property exclusively for charitable purposes.

Here, the appropriate exemption applies to "institutions of public charity." Our courts have long refused to apply this exemption absent suitable evidence that the property in question

is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Methodist Old Peoples Home"). They have also ascribed to the following definition of "charity" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all "institutions of public charity" share the following "distinctive characteristics":

The organization:

- 1) must benefit an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare-or in some way reduce the burdens of government;
- 2) must have no capital, capital stock, or shareholders and earn no profits or dividends;
- 3) must derive its funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 4) must dispense charity to all that need and apply for it, and must not provide gain or profit in a private sense to any person connected with it; and,
- 5) must not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; and
- 6) the term "exclusively used" means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old Peoples Home at 157.

Although the criteria cited in Methodist Old Peoples Home are not an exclusive rigid formula, they are guidelines that help to analyze whether an applicant is a charitable

organization. Du Page Co. Bd. of Rev. v. Joint Comm'n, 274 Ill.App.3d 461 (2nd Dist. 1995) (*leave to appeal denied*, 164 Ill.2d 561)

Applicant purchased the properties in 1998 and immediately began renovation to become museums and related offices. The museums opened in late 1999.

Applicant is a service organization composed of 212 members who volunteer their time to fulfill applicant's purposes. The primary purposes of applicant are to educate the public about the historical sites in the area and to assist historical and genealogical research. Applicant does not charge anyone for these services. Applicant does not charge fees to visit the research area and museums on the subject properties. Applicant assists researchers with genealogical questions without charges. Applicant has no capital, capital stock, or shareholders and earns no profits or dividends. (Tr. pp. 17-18) Applicant also acquired the resolutions from the taxing districts stating that applicant is a charitable organization using the property for charitable purposes as required by 35 ILCS 200/65(f).

For the foregoing reasons, it is recommended that Logan County Parcel Index Nos. 54-06-322-007-00 and 54-06-322-008-00 be exempt from property taxation for the period of August 2, 1999 through December 31, 1999 or for 42% of the 1999 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
Date: January 22, 2003